IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 15.11.2006

Nand Ram and others

...Appellants

versus

Gahar Singh and others.

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.

Present: Mr.Jaswant Jain, Advocate
for the appellants.
Mr.R.S.Mittal, Sr.Advocate with
Mr.Pritam Saini, Advocate & Mr.Atul Gaur,Advocate
for the respondents.

UMA NATH SINGH, J. (ORAL)

This judgment shall also dispose of connected RSA No.1335 of 1987 as the parties in both the appeals are common, so is the impugned suit property. The RSA No.515 of 1992 arises out of a judgment and decree in Civil Appeal No.21 of 90 decided on 4.1.1992 filed by Nand Ram, Mam Chand and Sher Singh against the appellants in connected RSA No.1335 of 1987 which arises out of a separate judgment dated 15.1.1987 passed by learned Additional District Judge, Narnaul, in Civil Appeal No.489/160 of 1985/1986 filed by Gahar and Amar Singh who are the respondents in the cross appeal.

It appears that Amar Singh and Gahar brought a civil suit against Nand Ram, Mam Chand and Sher Singh seeking a decree for permanent injunction restraining them from interfering with their possession over an agricultural land, which is said to have been re-allotted to Nand Ram etc. for the reason that the said land was found by the authorities to be

barren and uncultivated by the plaintiff-allottee. A cross suit was also filed by the defendants with the same prayer for grant of injunction. It appears that civil case No.714 of 1981 was decided on 9.8.1985. An appeal was preferred by Gahar and Amar Singh against the judgment and decree by filing Civil Appeal No. 489/160, which was decided on 15.1.1987. The cross suit being Civil Case No.247 of 1979 was decided on 24.3.1987, obviously after decision in Civil Appeal No.489/160 . The first appeal (CA No.21 of 90) preferred against the judgment and decree dated 24.3.1987 was decided on 4.1.1992. In both the cases, as said above, the parties were common but the factum of outcome of Civil Appeal No.489/160 decided on 15.1.1987 was not brought to the notice of the trial Court in Civil Case No.247 of 1979 and the first Appellate Court in Civil Appeal No.21 of 90 for the reasons better known to the parties. Further, no plea of res-judicata was taken therein. Moreover, in the instant Regular Second Appeals, the substantial questions of law framed by the parties at a later stage also do not refer to the point under controversy.

Under the circumstances, the impugned judgments in the first appeals so also in the cross suits are set aside with direction to remand both the suits to the Court of competent jurisdiction at Rewari, to try the suit afresh within a period of three months from the date of receipt of a copy of this order, on the basis of evidence as already led by the parties in the suits before the trial Court. The learned trial Court shall send notices to the parties for appearance of a date to be so fixed.

Record be sent forthwith to learned District Judge, Rewari, who shall assign the matter to a court of competent jurisdiction. Further, both the suits shall be consolidated and decided by a common order/judgment.

Thus, both the appeals stand disposed of in the terms as aforesaid.

November 15, 2006 **(UMA NATH SINGH)**
nk **JUDGE**